

## BEING A LITIGATOR JERSEY SHORE

It was the usual adversarial scene. The advocates sat on either side of the court, made submissions on points of trusts law, listened and grimaced as the judge interjected. Clients sat behind, observing and looking slightly bemused. For a London barrister or City solicitor with a regular court practice, it could have been an ordinary Monday morning in the High Court. But this was the offshore scene and I was sitting on a wooden pew in the Royal Court of Jersey, 14 miles from the French coast. Moments earlier, my head was bowed as three gentlemen approached the bench looking resplendent in ceremonial robes of red with black trim – the Bailiff of Jersey (Michael Birt, the President of the Royal Court and civic head of the Island) and two Jurats (judges of fact). Before proceedings had commenced in the Samedi Division, an officer of the Judicial Greffe read the Lord's Prayer in French in a hushed voice. As she read, I took in the ornate room out of the corner of my eye, with high ceilings and portraits of majestically bearded Bailiffs past, dating back to the 16<sup>th</sup> century. I pondered my new surroundings having recently moved from Herbert Smith in London to Bedell Cristin in Jersey.

This was my first case in the Royal Court and the (ill-informed) words of my old boss still rang slightly in my ears : *"This is Manchester United, I am Alex Ferguson, you are a talented youth team player just breaking into the first team. You wish to go and live by the seaside and play for Brighton!"* Being a litigator, I had naturally attempted a reply, spinning a rugby analogy, comparing my position to Jonny Wilkinson moving from Newcastle to Toulon to play at a high level, for good remuneration in the sunshine. He retorted that this was all very well, but I had not (yet) single handedly won the World Cup.

Having nearly played out my first season, the purpose of this article is to set out my observations on how being a litigator in Jersey differs to practice in the City of London. As the scene above suggests, it is similar, but differs due to the quirks of the Island. In 1066, Jersey became part of the Anglo-Norman realm. In 1204, King John lost Normandy to France but the Island remained loyal to the English Crown and was granted self-government. Jersey is a part of the British Isles, but not part of the United Kingdom and not part of the European Union. It is independent and has its own political system and laws, passed in the States of Jersey, the parliament and government of the Island. For at least thirty years, Jersey has been an offshore financial centre.

As litigators, we advise upon Jersey law. Jersey jurisprudence is influenced by English law, French law (especially the customary law of the Ancient Duchy of Normandy) and *ius commune* (principally Roman law). Contract, property and insolvency law are particularly Gallic in flavour, the latter involving concepts alien to an English practitioner, such as *dégrévement* (property taken in settlement of a debt under a court order). A Jersey property lawyer must be careful in his or her measurements, as a Jersey foot or *pied-perche* is equal to eleven Imperial inches (rather than twelve). If an Islander feels that their property is being physically threatened they may go along to the site with two witnesses, take off their hat, fall to their knees and cry to their Duke for justice (*"Haro! Haro! Haro! a l'aide, mon prince, on me fait tort"*). The Clameur de Haro acts as a kind of interim injunction (although it is rarely invoked in modern times).

These seemingly novel peculiarities demonstrate that one must carefully consider the Jersey position in any legal scenario. The Deputy Bailiff once said (slightly terrifyingly) to a colleague of mine at trial, "*if the English law of contract was relevant, Chitty might be a good place to start.*" Although corporate, trusts and criminal law are similar to English law, the Royal Court can and does take turns away from the English position (as it did recently in relation to the law of mistake). And, as Jersey is a small jurisdiction without a large volume of precedents, the Courts are willing to look further afield. Judgments from Canada, Cayman, BVI, Australia and Guernsey may be just as persuasive as English law. This all makes legal research and drafting opinions on Jersey law a difficult task. Procedure also differs, with the English practitioner's bible, the White Book, having no direct application. Proceedings are started by way of Summons or Order of Justice, rather than Claim Form. A defendant is summoned to appear in the Royal Court the following Friday to state whether the case will be defended. However, pleadings and procedure onwards are essentially the same.

As such, Jersey with its own laws and procedures, has its own Bar. To become an Advocate and appear in the Courts, one must take the Jersey Law Course (run by the Institute of Law in St Helier) and pass the advocate exams. This is a demanding course, similar to the English law conversion course, but taken part-time over two years while still working. The achievement is marked by a splendid swearing-in ceremony to the Bar at the Royal Court attended by all the Advocates on the Island, the Bailiff, Jurats and Lieutenant Governor (the Queen's representative), with speeches, pomp and circumstance. This reinforces the fact that the position of an Advocate in Jersey society is highly respected. But it is certainly not an honorary title, for as soon as you are called, you are immediately thrown into the line of fire to battle on your feet at trial.

Not being an Advocate, I currently practice as a "lawyer". I have higher rights of audience in England as a solicitor advocate but cannot appear here. It is the same for barristers. This leads to the slightly odd situation in significant cases in which English law is highly persuasive, where top Silks from the London Bar are also instructed and sit behind the Jersey Advocate, tugging on his or her gown at trial like a junior barrister. The Jersey profession is often called "fused" as most litigation lawyers become Advocates and the nature of practice combines elements of being a barrister and being a solicitor. Even as a non-Advocate, I certainly spend more time drafting pleadings, skeleton arguments and other court documents than I did in the City. My colleagues in the litigation department of Bedell Cristin are a mixture of former solicitors and barristers, often with substantial City and onshore experience, and some also with experience in other offshore jurisdictions, such as Cayman.

In terms of the work itself, it is often said that an offshore lawyer has to be more of a generalist. I do not necessarily agree with this. My old group at Herbert Smith practices general commercial litigation and, as a junior lawyer, every case was different. Of course partners develop areas of expertise, but generally they would take whatever came in through the door. Here, in Jersey, the focus for me so far has been on trusts and funds work, which is inevitable due to the jurisdiction and Jersey's position in the financial world.

Billions of pounds, dollars and other currency are held in Jersey or move through it in complex financial structures, which leaves a lot of scope for litigation. It also requires significant regulation, overseen by the Jersey Financial Services Commission, which means that the practice of a Jersey litigator can also involve financial investigations (work usually carried out by specialist departments in City law firms).

The main difference, I think, lies in the mixture between international and local work. By international, I mean acting for the trustees or beneficiaries of a Jersey trust with ramifications beyond the Island, or for the fund manager based in Jersey of a Cayman hedge fund with investments in Russian real estate, for instance. By local, I mean the day-to-day, (relatively) low quantum disputes between Jersey businesses, such as debt claims and breach of contract. The latter is new to me having worked at a City firm and a different challenge, sometimes involving colourful local characters that could have stepped straight out of an episode of *Bergerac*. The combination of smaller and larger cases means that I certainly have more discrete matters alive at any time, which can involve some juggling. It gives legal practice variety and makes it more tangible. Another big difference is the make-up of the litigation department, due to the legal aid burden in Jersey. Law firms have to provide Advocates for a quota of legal aid cases and, as such, Bedell Cristin also has specialist criminal lawyers who are instructed to appear in relation to criminal matters on the Island. So on any given day, there may be an Advocate from my department in the Magistrates Court on a plea of mitigation in relation to an assault outside a nightclub, while another appears in the Royal Court on a complex trusts case, for instance. The criminal work will likely be reported in the Island's only newspaper, the *Jersey Evening Post*. The commercial work might be reported in a trusts journal or financial publication.

Instructions can come from a multitude of sources, including private individuals, local companies, multinationals and onshore law firms. As a full-service firm, Bedell Cristin has core business lines in corporate and financial services (banking, private equity, funds and capital markets), litigation and insolvency, and private client work (local and international, trusts, foundations, employment, property and probate). As a litigator, there is certainly similar liaison with other groups as in a City firm. I have been working especially closely with the trusts and funds groups, which pass cases onto litigation as they get contentious.

A relief, personally, is the lack of enormous, multi-billion dollar cases, involving various law firms, dozens of partners and barristers, millions of documents and different time zones, which can be the bane of a junior lawyer's life (or lack thereof) in the City of London. Huge, long-running cases do come along (Alhamrani is a good example in Jersey), but the norm is more manageable big-ticket litigation. That said, there are times when I miss the resources of a City firm. Teams of trainees and a big reprographics department make life easier. Without a trainee to delegate to, I find myself doing far more legal research and actual black-letter law than I did in London. Generally lawyers are more self-sufficient and hands-on, with partners taking a bigger role in the discovery process, for instance. Certainly, from my experience, partners are more in touch with the status of each case and far more accessible to junior lawyers and clients. This is in line with the "partner-led" client service ethos at Bedell Cristin. But that is not to say that junior lawyers are without autonomy or responsibility. At a large City firm, I found that the job of a junior

lawyer was to get your head down, focus on whatever is dumped on your desk, and bill. The partners would manage the firm. In Jersey, however, I was immediately made to feel a part of the management and development of Bedell Cristin. Business development is therefore an important part of day-to-day work.

A lot has been said about the work-life balance, tax advantages and other offshore perks. This is generally true and, so far, I have enjoyed Jersey life. My two-minute walk to work is certainly preferable to a London commute, the beaches are spectacular and the sport and outdoor pursuits are excellent. But the purpose of this article is not to sell the Island, it is to consider the working life of a Jersey litigator. From my experience to date, it is partly like playing for Manchester United (big-ticket work), partly for Brighton (local work) and partly for Toulon (with some French flair). This is an interesting, quirky mix.

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